

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **VICE CHAIRMAN TOM FACEY**, on March 4, 2005 at 3:00 P.M., in Room 472 Capitol.

**ROLL CALL**

**Members Present:**

Rep. Tom Facey, Vice Chairman (D)  
Rep. Don Roberts, Vice Chairman (R)  
Rep. Mary Caferro (D)  
Rep. Emelie Eaton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. William J. Jones (R)  
Rep. Dave McAlpin (D)  
Rep. Tom McGillvray (R)  
Rep. Mike Milburn (R)  
Rep. Art Noonan (D)  
Rep. Ron Stoker (R)  
Rep. Bill Warden (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Arlene Becker, Chairman (D)  
Rep. Pat Wagman (R)

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 41, 2/22/2005  
Executive Action: SB 6, Be Concurred In

**HEARING ON SB 41****Sponsor: SEN. BOB KEENAN, SD 5, BIGFORK****Opening Statement by Sponsor:**

**SEN. BOB KEENAN** opened the hearing on **SB 41**. He began by reading from the bill on Page 1, Line 16 (2): "The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services." "Shall consider" are the key words and SB 41 is not a mandate. Recently there was a crash in the general fund and the State could not continue the Medicaid program as planned. With the Legislature meeting for 90 days every other year, the Department is left with the difficult task of identifying areas in the budget that may need reductions. This bill would help to give them some guidelines if this type of situation comes again.

The question is, when there is a shortfall, does the Legislature want to eliminate a program or service or starve all programs. This is the basis of what the Medicaid Redesign was trying to get at. The Redesign Council had a discussion about Page 1, Line 20(b): "giving preference to the elimination or restoration of an entire medicaid program or service...."

**SEN. KEENAN** had an amendment for Page 1, Line 22 which would strike "protect life" and insert "treat life threatening diseases."

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}*

**Proponents' Testimony:**

**Jeff Buska, Senior Medicaid Policy Analyst, Department of Public Health and Human Services (DPHHS)**, concurred with the sponsor's opening. SB 41 came out of the Medicaid Redesign Council. This recommendation was important to them and hoped it would be set in statute.

**Sami Butler, Intermountain Children's Home Services and Montana Children's Alliance**, stood in support of the bill.

**Opponents' Testimony:** None

**Informational Testimony:** None

*{Tape: 1; Side: A; Approx. Time Counter: 8 - 10.7}*

**Questions from Committee Members and Responses:**

**REP. MIKE MILBURN** asked about the questions the Senate had concerning SB 41. **SEN. KEENAN** said that SEN. SCHMIDT was concerned that the members of the Medicaid Redesign would not know about the amendment of "either increase or reduce services" on Page 1, Line 17. SEN. HAWK, at the last minute, saw the importance of the bill and asked to have the Senate debate it one more time.

**REP. MILBURN** expressed concern that in the Legislature, between committees and Appropriations, there is not enough communication between them. **SEN. KEENAN** declared that the staff is extremely important to bring continuity from one session of the Legislature to the next. Until HB 2 comes to the House floor, there isn't a great deal of communication. He said that there are some excellent documents written. One is by Taryn Purdy in the Legislative Fiscal Division about how to implement policy in HB 2.

***{Tape: 1; Side: A; Approx. Time Counter: 10.7 - 16.8}***

**REP. BILL WARDEN** questioned SEN. KEENAN about Page 1, Line 18. **SEN. KEENAN** said that particular policy states: "...the most vulnerable and the most in need..." which means the severity of the illness or the poverty level of the person. **Mr. Buska** responded that budget cuts are difficult. Much depends on the dollar amount, where to cut and who is going to be impacted.

***{Tape: 1; Side: A; Approx. Time Counter: 16.8 - 19}***

**REP. TERESA HENRY** asked for clarification on Page 1, Lines 20 and 21. It seemed to be the exact opposite of the Legislature's policy which would be a significant policy change. **SEN. KEENAN** responded that her statement was true. He personally liked the new approach much better. Across-the-board cuts which come late in the session, from a legislative perspective, are too easy and too painful for the people on the other end. Of course, that means prioritizing the programs which Medicaid Redesign has done. **SEN. KEENAN** read portions from "Montana Public Health Care Redesign Project." The Council recommended, and the Department has adopted, a set of guiding principals and priorities around the relative value of different aspects of the Medicaid program to be applied when budgetary constraints force decisions regarding reductions. It is important to remember that the Medicaid program has been designed to serve as the final safety net for those individuals who, through economic, social or medical distress, have no other recourse.

***{Tape: 1; Side: A; Approx. Time Counter: 19 - 23.2}***

**REP. DON ROBERTS** felt the bill was saying, on Page 1, Line 16, that the Legislature would be in session to make decisions with the Department if the need should arise. **SEN. KEENAN** saw the problem of the language and had not meant to make it inclusive. He said the intent was the Department would act based on these principles or the Legislature would make policy when it is in session. **Mr. Buska** thought the intent was not "the Department and the Legislature." He proposed new language to say one or the other.

*{Tape: 1; Side: A; Approx. Time Counter: 23.2 - 25}*

**REP. TOM MCGILLVRAY** questioned the sponsor about Page 1, Line 17, which spoke about policy and who would be making that policy. **Ms. Fox** said the Legislature makes policy in both budget and law. She added that the Department has rule-making authority given to them by the Legislature. A substantial amount of rule-making authority has already been given to the Department, but this would be within the confines of what the Legislature has delegated to them.

**VICE CHAIRMAN TOM FACEY** explained that usually the Department will contact the proper legislator and let him/her know they are going to make a rule involving the law he/she made and ask if he/she would like to have input or be at the meeting.

*{Tape: 1; Side: A; Approx. Time Counter: 25 - 28.5}*

**REP. MARY CAFERRO** asked whether Medicaid Redesign Council had used consensus or majority in making their decisions. **SEN. KEENAN** thought it was the consensus method. **REP. CAFERRO** stated that consensus was used at the beginning but then it evolved into majority vote. Thus, not everyone was in agreement on all matters.

**REP. RON STOKER** suspected that some significant cuts in Medicaid would be coming forward from the Federal Government. He felt the Legislature should set up some guidelines for the Department when or if these cuts should come about. **SEN. KEENAN** agreed. The Federal Government has suggested reductions in the Medicaid budget which could be in the Federal Medicaid Assistance Percentage (FMAP). This could require Montana to fund a bigger percentage of their Medicaid budget. The FMAP is based on the economy of a state and since Montana's economy has been growing, their FMAP percentage would increase, meaning they would pay more of the cost.

*{Tape: 1; Side: A; Approx. Time Counter: 28.5 - 32.}*

***SEN. KEENAN'S comments continued on Tape: 1; Side: B}***

**REP. STOKER** felt that with possible changes in the FMAP, Montana citizens might need to get ready for some big changes.

**SEN. KEENAN** agreed again. He said that his ultimate desire from the beginning was that Montana's target should be to eliminate the need for Medicaid in the state. If the economy goes up and all Montanans succeed, this could happen.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 5}*

**REP. STOKER** declared that this bill would not go to Appropriations but would go directly to the House floor. He was quite concerned about the communication gap between policy and budget. **SEN. KEENAN** readily agreed and hoped that the bill would not go on the Consent Calendar but go to the House floor for a good debate so all the legislators would have an understanding of the importance of the bill.

**REP. STOKER** asked how big the Medicaid budget was. **SEN. KEENAN** said that last year the rate of increase for Medicaid in Montana was growing at a nine percent rate. **Mr. Buska** said it is in the neighborhood of \$645 million.

**REP. WILLIAM JONES** wondered about the list of services starting on Page 1, Line 25. **SEN. KEENAN** explained those services starting on Line 25 (a) to (l) are mandated by Medicaid. Services starting on Line 13 from (a) to (q) are those that may be provided by Department rule.

**SEN. KEENAN** stated that through the legislative process, \$8.5 million was taken from the I-146 tobacco prevention money which plugged some holes because the executive budget recommendations included elimination of the poison control money, the AIDS money and \$6.5 million of pharmacy for mental health. At that time, a policy decision was made by **SEN. JOHN COBB**, himself and others and introduced SB 485 which took the \$8.5 million from I-146. He spoke at some length about policy, budgets and priorities.

*{Tape: 1; Side: B; Approx. Time Counter: 5 - 15}*

**REP. JONES** and **SEN. KEENAN** had a discussion on the language of the bill and several amendments were proposed.

**Mr. Buska** explained how the Department used their rule-making authority. He spoke about priorities and the authority of the Department to limit the amount, scope and duration of non-mandated services for eligible beneficiaries. SB 41 will help the Department to implement budget cuts. They will prioritize so that the least impact possible will be imposed on clients and providers.

*{Tape: 1; Side: B; Approx. Time Counter: 15 - 23.3}*

**REP. HENRY** said she understood the Legislature sets the policy which is the intent and the Department makes the rules which sets

the procedures. She wondered if there would be a public hearing related to administrative rules in implementing these terms. She thought the public should have input so they know what the terms life-threatening, severe, significant, etc. mean.

**SEN. KEENAN** felt that in the rule-making process there is public discussion; but specifically addressing definitions, that should be left to the bill drafters.

**Mr. Buska** did not believe it would be the Department's intent to put specific definitions in the administrative rules. They already have a definition of medically necessary services.

**REP. HENRY** asked if someone is terminally ill, they may not have severe pain and may not meet the definition of medically necessary. She applauded the intent but felt more discussion was needed.

*{Tape: 1; Side: B; Approx. Time Counter: 23.3 - 32}*

**REP. MIKE MILBURN** believed that the bill might go too far in giving preference to elimination. He thought it would be better to have another step in which they first cut each program proportionally. Completely eliminating a program might take out a very necessary medical procedure which could save a life.

**SEN. KEENAN** appreciated all the comments and suggestions because he felt that everyone should have an input in the bill. On Line 21, it states, "...rather than sacrifice or augment the quality of care for several programs or services through solution of funding...."

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.7}*

**REP. MARY CAFERRO** wondered if the Department had shared the Medicaid Redesign policy with the Subcommittee Health and Human Services of Appropriations and the full committee. **Mr. Buska** believed that about a month ago the report had been made available to all legislators. Mr. Chappius had also been referencing that report to legislators in those two committees.

*{Tape: 2; Side: A; Approx. Time Counter: 4.7 - 5.8}*

**REP. ROBERTS** said the Department collects statistics on many things, so when they make adjustments, those statistics are used to help them make their decisions. **Mr. Buska** replied that was correct. The program managers are monitoring their programs in terms of budget expenditures, utilization of services, etc.

**REP. ROBERTS** commented that when there are sudden changes, the Department is able to adjust what is happening. **Mr. Buska** again replied that was correct. They contact providers and associations and try to work on global policy to know how to

address the rule-making process to effectively manage the program.

**REP. ROBERTS** inquired if this bill would give the Department more ability to adjust more strongly in one area than another versus across-the-board cuts. **Mr. Buska** agreed.

*{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 8}*

**REP. STOKER** asked the sponsor if this committee should be down in Appropriations to hear Mr. Chappius defend their budget of \$3.2 billion and get a feel for how this all will get resolved. **SEN. KEENAN** said that might be helpful but nothing is finished until the end.

*{Tape: 2; Side: A; Approx. Time Counter: 8 - 10.2}*

**REP. EMELIE EATON** wondered if the sponsor would want to amend Page 1, Line 21 to read, "...through dilution or increase of funding...." **SEN. KEENAN** agreed.

**VICE CHAIRMAN FACEY** questioned the sponsor about Federal Medicaid Assistance Percentage (FMAP) and wondered if all states had the same reimbursement rate. **SEN. KEENAN** replied that FMAP is based on the economy of the state and the number of people at the 100% Federal Poverty Level (FPL). Rhode Island has an FMAP of 45.6%. Montana's FMAP is around 28%. It varies from state to state.

**Mr. Buska** explained the FMAP is federally defined and it varies state by state. He did not believe that any state could have an FMAP higher than 50%, meaning no state would pay more than 50% of the cost. In Montana, because the economic conditions are not the greatest, the FMAP is lower than Rhode Island, meaning Montana pays a lesser percentage of the cost. For every dollar spent now, it is requiring additional funds to cover Montana's existing caseload of services and the projected increases in the caseloads.

**Closing by Sponsor:**

**REP. KEENAN** handed amendments from the Department to Ms. Fox and felt there would be other amendments coming. He urged a serious discussion concerning SB 41 and thanked the Committee for a very good hearing.

*{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 15.3. CHAIRMAN ARLENE BECKER returned to the hearing. REP. DAVE MCALPIN left the hearing.}*

**EXECUTIVE ACTION ON SB 6**

**Motion:** REP. HENDRICK moved that SB 6 BE CONCURRED IN.

**Discussion:**

REP. WINDY BOY inquired about Page 1, Line 23 where it states: "...if possible, ascertain whether the newborn has a tribal affiliation, and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn...." Ms. Fox explained that wherever the parent would be handing the child off to, that staff can ask a question if possible.

REP. WINDY BOY then questioned Page 2, Line 6 where it states: "...any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act...." Ms. Fox said that portion would take care of a child with Indian heritage.

REP. HENRY explained that in a case of a baby being dropped off, there would be public notification of that drop off.

*{Tape: 2; Side: A; Approx. Time Counter: 15.3 - 20.3}*

**Vote:** Motion carried unanimously by voice vote 16-0. REP. WAGMAN and MCALPIN voted by proxy.

REP. TERESA HENRY will carry the bill.

*{Tape: 2; Side: A; Approx. Time Counter: 20.3 - 21}*

**ADJOURNMENT**

Adjournment: 4:45 P.M.

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REP. ARLENE BECKER, Chairman

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MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

**EXHIBIT ([huh48aad0.PDF](#))**